

**`Minutes of Meeting**  
**Health Services Council**  
**Project Review Committee-II**

**DATE: 17 November 2005**

**TIME: 3:00 PM**

**LOCATION: Health Policy Forum**

**ATTENDANCE:**

**Committee II: Present: Victoria Almeida, Esq. (Vice Chair), Raymond C. Coia, Wallace Gernt, Esq., Sen. Catherine E. Graziano, RN, Ph.D., Robert J. Quigley, DC, (Chair), Larry Ross, Reverend David Shire (Secretary)**

**Not Present: Rosemary Booth Gallogly, Maria R. Gil, Denise Panichas**

**Staff: Valentina D. Adamova, Michael K. Dexter, Joseph G. Miller, Esq., Jacqueline Steiner (Intern)**

**Public: (see attached)**

**1. Call to Order and Approval of Minutes**

**The meeting was called to order at 3:05 PM. The Chairman noted that conflict of interest forms are available to any member who may have a conflict. The Chairman stated that due to the Open Meetings Act, the minutes of the meetings have to be available to the public by the next meeting date or within thirty-five days, which ever is sooner. The Chairman stated that because the next meeting might not occur within thirty-five days or the minutes might not be available by the next meeting time, he would ask the Committee members to vote to extend the availability of minutes beyond the time frame as provided for under the Open Meetings Act. A motion was made and seconded, and the motion passed by a vote of seven in favor and none opposed (7-0) that the availability of the minutes for this meeting be extended beyond the time frame as provided for under the Open Meetings Act. Those members voting in favor were: Almeida, Coia, Gernt, Graziano, Quigley, Ross, Shire.**

## **2. General Order of Business**

**The first item on the agenda was the Applications of Dialysis Center of Wakefield, LLC, Dialysis Center of Warwick, LLC, Dialysis Center of West Warwick, LLC, Dialysis Center of Westerly, LLC, and Dialysis Center of Woonsocket, LLC [subsidiaries of American Renal Associates, Inc.] for change in effective control of five Outpatient Kidney Treatment Centers owned by Bio-Medical Applications of**

**Rhode Island, Inc., Bio-Medical Applications of Woonsocket, Inc., and Everest Health Care of Rhode Island, Inc. [subsidiaries of Fresenius Medical Care Holdings, Inc.] at the following locations: 140 Kenyon Avenue in Wakefield, 2736 Post Road in Warwick, 1775 Bald Hill Road in Warwick, 1 Rhody Drive in Westerly, and 2100 Diamond Hill Road in Woonsocket.**

**Staff reviewed the handouts. There was an advisory from the Department of the Attorney General, and comments from Andrew F. Brem, MD, Rhode Island Hospital, and two anonymous persons, and staff's memo with respect to the background history of the ownership of kidney dialysis treatment facilities in RI in the past two years. The memo noted that 13 facilities are currently operating in RI with a total of 292 stations. If this proposal is approved two facilities in Rhode Island, which total 33 stations, and a facility in Fall River will close. There will be 13 facilities with a total of 259 station left, which represents a decrease in 13% in the number of facilities and a decrease in 11% in the number of stations. This will result in a majority interest by ARA of 11 out of the 13 facilities in Rhode Island, 85% of all facilities, and 235 out of 259 of the stations, 91% of all stations. Two remaining facilities are subsidiaries of Renal Care Group, Inc. Fresenius Medical Care Holdings, Inc. has pending applications to acquire those two facilities. Staff noted that the review of these applications commenced on November 7th, and the comment period runs through December 7th.**

**Ms. Rocha, legal counsel to the applicant, stated that American Renal Associates, Inc., (“ARA”) and Dr. Chazan and his colleagues currently provide services at 6 kidney dialysis centers in Rhode Island located in South Providence, Tiverton, Pawtucket, Cranston, East Providence, and Johnson. She stated that ARA proposes to expand its facilities by acquiring 5 Fresenius facilities located in Wakefield, Warwick, Westerly, West Warwick, and Woonsocket. It was noted that Dr. Brem has submitted a letter of concern regarding the proposed transaction with respect to its effect on pediatric patients. Ms. Rocha stated that Dr. Brem and Mr. Carlucci have met and reached an agreement regarding the provision of services to pediatric patients.**

**The Chairman questioned where the services would be located for the pediatric patients. Mr. Carlucci stated that after discussing this with Dr. Brem, all of the American Renal Associates, Inc.’s facilities will be available for pediatric nephrology.**

**Mr. Ross stated that the facilities involved in the change of ownership have been losing money and asked how the ARA is going to turn them around. He asked how ARA is projecting an increase in revenue. The applicant referred to their experience in Rhode Island, their ability to operate well financially and their expectations to continue operating similarly in the future.**

**The Chairman asked ARA to explain what the applicant meant by**

stating that Rhode Island is a 'poor paying market'. The applicant answered that Medicaid reimbursement is less than at Medicare rates. Blue Cross and United do not pay more than Medicare rates and in other states commercial insurers pay more than Medicare rates.

Chairman expressed his concern about ARA creating a monopoly. The applicant stated that there are 2 more facilities that have outpatient capacity, Rhode Island Hospital and Miriam Hospital. It was noted that Rhode Island Hospital is currently structured to serve as an inpatient care unit.

The applicant stated that their analysis of the market includes areas outside of Rhode Island, such as parts of Connecticut and Massachusetts. The facilities that are proposed to be closed are in close proximity to other centers. The applicant's analysis of the market share was based on dialysis patients, and pre-acquisition the market share is 53% FMS and 17.8% ARA. After the acquisition it would be reversed to 18.1% FMC and ARA 48.7%. The applicant offered to provide this information to the Committee.

The Chairman asked whether the closing of the facilities would decrease accessibility for patients. The applicant stated that the accessibility would not be affected.

Mr. Gernt asked what is the role of the state from a regulatory standpoint. Staff noted that the Department of Attorney General is

monitoring this process. If the Health Services Council believes that concentrating the market into one very large provider would impede access then that is something that the Council can require. It was not believed that the Department holds a direct jurisdiction on market share. The federal government has jurisdiction and they are reviewing Fresenius Renal Care acquisition/merger.

Staff asked the applicant whether they were required to provide information to the Federal Trade Commission (“FTC”) with regards to this application. Ms. Rocha stated that the FTC is reviewing this transaction. The applicant stated that this is in the early stages of the review process, the FTC has requested certain information which has been provided to them and that the applicant does not know how long FTC’s review would take and that they expect additional requests for information.

The Chairman asked the legal counsel to the Department for an opinion on this issue. Mr. Miller stated that this would need more inquiry. He asked if it was possible that the FTC may require the applicant to divest some of its Rhode Island facilities if this transaction is approved. A representative of Fresenius stated that irrespective of this transaction Fresenius will be moving out of its ownership of these clinics because they are in financial trouble, either through closure or sale to ARA.

Rev. Shire stated that it would help to have an opinion from the FTC

and noted that the Committee may want to wait until FTC reaches a decision. Mr. Miller asked how long it would take the FTC to provide an opinion. The applicant stated that they don't know.

Staff stated that the concern would be whether ARA would be required to divest by FTC. Ms. Rocha stated that she would be able to provide a better status with regards to the FTC at the next meeting. She stated they would provide the information regarding financial viability requested by Mr. Ross. An executive summary of their method of geographical analysis was requested and will be provided in the next meeting.

Sen. Graziano noted that the application identified the applicant as providing 2% of charity care as percentage of billed revenue that's not collected and stated that uncollected bills do not qualify as charity care and is considered bad debt. Sen. Graziano requested that the applicant revise their response regarding percentage of charity care provided.

To Rev. Shire's inquiry about the difference in expenses, the applicant stated that they could not line up the different line items.

Mr. Gernt asked what would happen if the Committee grants approval but the FTC does not. The applicant stated that there is no specific timetable. Ms. Rocha stated that there are two FTC reviews, one for Fresenius and one for the current proposal by ARA, and she will

**provide an update at the next meeting.**

**Mr. Miller asked which geographical breakdowns is FTC reviewing, whether they are restricting themselves to Rhode Island. Ms. Rocha stated that the information they are providing to FTC includes Massachusetts and Connecticut. Mr. Miller stated that the Committee is looking at the impact on Rhode Island.**

**The applicant stated that access would not be affected and that many facilities are currently underutilized. Staff requested a market analysis was requested to back up the information about their utilization rates at the facilities. Staff asked that because according to the applicant many facilities are underutilized, whether the applicant plans on closing any more facilities. The applicant answered no. The applicant stated that it takes longer to reach high utilization in a larger facility.**

**Mr. Gernt inquired what is the 'breakeven' level of operation. The applicant stated that it varies according to volume, labor cost, and insurance mix and that they have no plans for closing additional facilities.**

**Staff noted that the applicant projects the revenue to increase. The applicant stated that they were able to raise their rates with Medicare and Blue Cross, and they anticipate the same ability to manage the economics of additional facilities.**



**The Chairman stated that the Committee needs to find out more about the legal aspects of this proposal.**

**Staff requested that the applicant address the issue of financial viability as in 2004 its shareholder deficit was \$8 million. The applicant stated that their more current financials have improved as their centers mature and become more profitable and that they have recently restructured their debt.**

**There being no further business the meeting was adjourned at 4:10 PM.**

**Respectfully submitted,**

**Valentina D. Adamova**